the defendant was so drunk at the time of the killing as to be incapable of entertaining a premeditated design to effect the death of the deceased, he could not be convicted of murder in the first degree; that if he was incapable, by reason of intoxication, of entertaining any design to kill, he could not be convicted of murder in the second degree, and that such a finding would reduce the offense to manslaughter in the first degree. *State* v. *Corrivan* (Minn.), 100 N. W. 636.

NEGOTIABLE INSTRUMENTS LAW—SECTION 64—CHANGE OF COMMON LAW RULE—In *Rosetta Corn* v. *Julia Levy et al.*, N. Y. Supreme Court, Appellate Division (July, 1904), it was decided that sec. 114 of the negotiable instruments law (which is identical with sec. 64 of the Virginia statute) changed the common law in that a third party could not be charged as an endorser of a promissory note before delivery unless the complaint alleged that the endorsement was made in order to give the maker credit with the payee or that the party endorsed the note as surety for the maker. The omission of such an allegation was formerly held to be a fatal defect in an action to charge such an endorser. The necessity of an averment to that effect appears no longer to exist, however, in view of the plain language of the negotiable instruments law, which seems to require nothing more than the simple fact of the endorsement to render the defendant *prima facie* liable in such a case.

CONTRACT—LACK OF CAPACITY—INTOXICATION—In order to establish intoxication as a defense at law in cases of contract, it must appear that the intoxication of the person whose competency is challenged was so far complete that he would be unable to understand the nature and effect of the act in which he was engaged and the business he was transacting. *Waldron* v. *Angleman* (N. J.), 58 Atl. 568.

DISCHARGE OF SERVANT—MALICIOUS PROCUREMENT—LIABILITIES—In *Lancaster* v. *Hamburger* (Ohio), 71 N. E. 289, it was held that a patron of a street railway company incurs no liability to a conductor by reporting to the superintendent of the company such conductor's misconduct while on duty toward a passenger, though in making the report he is prompted by ill will and a desire to secure the conductor's discharge from the service of the company.

OBITER DICTUM—WHAT IS IT?—Where a court places its decision of the ultimate legal issue before it upon its decisions of two legal questions which were pertinent to the issue, debated at the bar, considered and determined in the opinion, the decision of either one of which is sufficient to sustain the determination of the ultimate issue, the decision of each of the two questions and of every pertinent legal question decided in reaching either decision has the binding force of an adjudication, and is not a mere *obiter dictum*. *Union Pacific Ry.* v. *Mason City etc. R. R.*, 128 Fed. 230, citing *Railroad Cos.* v. *Schutte*, 103 U. S. 118, 143, 26 L. Ed. 327; *Buckner* v.

Chicago, Milwaukee etc. Ry., 60 Wis. 264, 270, 273, 19 N. W. 56; *Alexander* v. *Worthington*, 5 Md. 471, 481; *Jones* v. *Habersham*, 107 U. S. 174, 179, 2 Sup. Ct. 336, 27 L. Ed. 401. See, also, article in The Bar, June-July, 1904, p. 19.

SERVICE OF NOTICE OF PROCESS—DEFENDANT PHYSICALLY UNABLE TO TAKE PAPERS—SERVICE MUST BE ORDERLY—In *Anderson* v. *Abeel*, New York Law Journal, August 24, 1904, the Appellate Division of the Supreme Court of New York held that when a defendant is physically unable to take papers thrust upon him, and is not definitely apprised that service was intended, thrusting the notice upon his person does not constitute a good service of the summons, but a plain statement of what the process server is trying to do is necessary. The court said: "Section 426 of the Code of Civil Procedure provides that personal service of the summons upon a defendant must be made by delivering a copy thereof within the state to the defendant in person. Courts, in construction of this provision, have held that in some substantial form the party is to be apprised of the fact that service is intended to be made, and be informed generally of what is going on against him, that he may have knowledge and an opportunity to defend. (*Hiller* v. *B. & M. R. R.*, 70 N. Y. 223). This must be done in an orderly manner. If the defendant seeks to avoid the service, the paper may be placed upon his person, or it may be dropped near to him and his attention called to the proceeding and the fact that service is intended (*Wright* v. *Bennett*, Note 30 Abb. N. C. 65). In some form these acts must be done in order to effect a good service (*Beekman* v. *Cutler*, 2 C R. 51; *Correll* v. *Granger*, 12 *Misc.* 209). A person may not assault another in order to effect service, and papers violently thrust upon the person, even though the act may convey some information to the party intended to be served, is not good service and will be held void (*Davison* v. *Baker*, 24 How. Pr. Rep. 39). It is evident in this case that good service was not made. The defendant was handcuffed on one side to a detective, was carrying a bag in his other hand and accompanied by a detective, upon that side. He was physically unable to take the papers had they been presented to him in the most orderly manner. The act of the process server amounted in substance to an assault. The defendant was encumbered by handcuff and bag; he was being hustled along by the detectives; a crowd of people was following and surrounding him. Under these circumstances it is evident that a plain statement was necessary in order to possess the defendant of knowledge of what the process server was trying to do, and it is clear that both in Abeel's mind and in the minds of the detectives in whose custody he was that an attempt was made to assault him when the process server burst through the crowd. The act of the process server and the immediate resistance by the custodian of the defendant speak with more force than words of the character of the act and the impression produced, and it convinces us that the transaction assumed the appearance of an attempted assault rather than the orderly service of a paper. It is clear beyond controversy that Abeel did not know at that time, nor for some time after that any service